

## SECTION 3: REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

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- A. **General.** Subdivisions containing six or more lots, and subsequent subdivisions containing five or fewer lots that do not qualify as first minor subdivisions, shall be reviewed under the procedures of this Section. **This procedure is a four-step process:**
- **pre-submittal meeting**
  - **pre-application review**
  - **preliminary plat**
  - **final plat**
- B. **Pre-Submittal Meeting.** The subdivider shall meet with planning department staff prior to submitting a plan or plat. The purpose of this meeting is to discuss these Regulations and standards, to familiarize the subdivider with the goals and objectives of applicable plans, regulations and ordinances, and to discuss the proposed subdivision as it relates to these matters.
- C. **Pre-Application Review.** After the requirement for a pre-submittal meeting has been satisfied, and prior to submittal of a preliminary plat application, the subdivider shall submit an application for pre-application review, the appropriate fee, and all required pre-application information as set forth in these Regulations.
1. Planning Department (Subdivision Administrator) Review: Six copies of the pre-application materials are required.
    - a. Time of Review: The planning department shall review the pre-application plan within 30 working and will provide a written response to the subdivider of the pre-application submittal.
    - b. The Planning Department shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning regulations, floodplain regulations, building codes and fire codes.
    - c. The Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivision administrator or planning board on the subdivision application. The Planning Department shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond.

- d. The Planning Department shall identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the Planning Department to request additional information at a later time.
    - e. Unless the subdivider submits a subdivision application within 180 days of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.
  - 2. Optional Planning Board Review: If a proposed subdivision is located in the jurisdictional area of a planning board, the subdivider may request in writing that the planning board review pre-application plans. The letter of request and 16 copies of the pre-application materials are required.
    - a. Time for Review: The request must be received at least 18 days prior to the planning board meeting at which it is to be considered. A copy of the approved minutes of the planning board meeting will be forwarded to the subdivider.
- D. Concurrent Review.** The subdivider has the option of submitting a MDEQ/Local Government Joint Application Form in the place of a Preliminary Plat Application Form, and to request concurrent subdivision review by the MDEQ and Gallatin County (76-4-129, MCA).
- E. Subdivision Application and Preliminary Plat Review.** After the requirement for pre-application review has been satisfied, the subdivider shall submit a complete subdivision application form and required copies (on the application form) addressing these topics and containing the following materials, all described in more detail in the requirements of Section 5. The completed subdivision application for preliminary plat review is submitted to the Planning Department and must conform to the requirements of these Regulations. The preliminary plat shall be prepared by a surveyor licensed to practice in Montana.
- F. Review Process.**
  - a. Element Review:
    - i. Within 5 working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by *Submittal Requirements*, Section 5 of these Regulations, and shall give written notice to the subdivider of the determination.

- A. If the Planning Department determines that elements are missing from the application, the subdivision administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the Planning Department until the application is resubmitted.
- B. The subdivider may correct the deficiencies and resubmit the application.
- C. If the subdivider corrects the deficiencies and resubmits the application the Planning Department shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required, as applicable.
- D. This process shall be repeated until the subdivider submits an application containing all the materials required, or the application is withdrawn.

b. Sufficiency Review:

- i. Within 15 working days after the Planning Department notifies the subdivider that the application contains all of the required elements as provided in subsection (a) above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these Regulations and shall give written notification to the subdivider of the determination.
  - A. If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the Planning Department until the material is resubmitted.
  - B. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
  - C. If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the Planning

Department shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these Regulations.

- D. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these Regulations, or the application is withdrawn.
- ii. A determination that an application contains sufficient information for review as provided in this subsection (b) does not ensure that the proposed subdivision will be approved or conditionally approved by the County Commission and does not limit the ability of the Planning Department, planning board, or the County Commission to request additional information during the review process.
- iii. A determination of sufficiency by the Planning Department pursuant to this subsection does not limit the MDEQ from requiring additional water and sanitation information as part of the MDEQ review of water and sanitation information.
- c. Applicable Regulations. Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.
- d. Affected Agencies. The Planning Department may submit copies of the preliminary plat and supplementary information to the affected utilities and public agencies for review and comment. If the proposed subdivision is situated within a rural school district, the planning department shall provide an informational copy of the preliminary plat to the school district. A rural school district means a school district in which a majority of the pupils in the district reside outside the limits of any incorporated city or town. Review by public agencies or utilities shall not delay the Commission's consideration of the preliminary plat beyond the statutory 60 working day review period. The County Commission will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the Planning Department

or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

- e. Review Period and Scheduling Public Hearing. Following determination that the subdivision application is sufficient for review, the planning department will review the application and schedule a public hearing before the County Commission within the statutory 60 working day review period. Within 60 working days, the County Commission shall approve, conditionally approve or deny the proposed subdivision according to these Regulations, unless the subdivider and the subdivision administrator agree in writing to an extension or suspension of the review period, not to exceed one year.
  - f. Public Hearing Notice: Notice of the time and date of the preliminary plat public hearing shall be published in a newspaper of general circulation in the County not less than 15 days prior to the date of the hearing. The notice shall be published twice, with at least 6 days separating each publication. The subdivider, each property owner of record and each recorded purchaser under contract for deed immediately adjoining the land included in the plat shall be notified of the hearing by certified mail not less than 15 days prior to the hearing.
- G. Subdivisions Within Planning Board Jurisdiction.** After the subdivision application is deemed to have all the required elements and to contain sufficiency information for review, and the Planning Department has prepared a staff report, if the application is within the jurisdiction of a planning board, the planning board may conduct a public hearing and review the proposed subdivision, and to receive public comment.
- a. The planning board shall consider:
    - (1) Relevant evidence relating to the public health, safety, and welfare.
    - (2) The environmental assessment.
    - (3) Other regulations in effect in the area of the proposed subdivision.
    - (4) Whether the preliminary plat conforms to the provisions of:
      - a) Any officially adopted Growth Policy for the area involved.
      - b) Applicable zoning regulations.
      - c) The Montana Subdivision and Platting Act.
      - d) Subdivision Regulations.
  - b. Within 10 working days of the public hearing and planning board review, the planning board shall submit in writing to the Commission:

- (1) Its advice regarding the items under subsection (a) above.
- (2) A recommendation for approval, conditional approval, or disapproval of the plat, or no official recommendation.

**H. Subdivisions Outside of Planning Board Jurisdictions.** For subdivisions outside the jurisdiction of a planning board, the Commission shall conduct the public hearing and the review of the subdivision in accordance with this Section.

**I. County Commission Hearing – General.**

- a. After the planning board makes its recommendation, the County Commission shall hold a public hearing on the subdivision application.
- b. All comments and documents regarding the subdivision shall be submitted to the Planning Department, rather than to the governing body directly, to be forwarded to the County Commission.
- c. The County Commission shall determine whether public comments or documents presented for consideration at the public hearing constitute either:
  - i.. information or analysis of information that was part of the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the County Commission shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision;
  - ii. new information or analysis of information that has never been submitted as evidence, in which case the County Commission shall proceed as set forth in subsection (d) below.
- d. If the County Commission determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to this subsection and subsections (e) and (f) below.
  - i. If the County Commission determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the

proposed subdivision without basing its decision on the new information or analysis of information; or

- ii. If the County Commission determines the new information or analysis of information is relevant and credible, then the governing body shall schedule a subsequent public hearing.
  - iii. At the subsequent hearing the County Commission shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the County Commission will rely upon in making its decision on the proposed subdivision.
- f. New information or analysis of information is considered to be credible if it is based on one or more of the following:
- i. physical facts or evidence;
  - ii. corroborated personal observations;
  - iii. evidence provided by a person with professional competency in the subject matter; or
  - iv. scientific data.

**J. County Commission Hearing - Subsequent Public Hearing.**

- a. If a subsequent public hearing is held, it must be held within 45 days of the County Commission's determination to schedule a subsequent hearing. The County Commission shall consider only the new information or analysis of information at the subsequent public hearing in making its decision on the proposed subdivision.
  - i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the County not less than 15 days prior to the date of the subsequent hearing.
  - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider, each adjoining landowner to the land included in the

preliminary plat, and each purchaser under contract for deed of property (provided by the subdivider) immediately adjoining the land included in the preliminary plat.

- b. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the County Commission's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the County Commission's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

**K. Amended Applications – Preliminary Plat Review.**

- a. If the subdivider changes the subdivision application or preliminary plat after the Planning Department makes a determination of sufficiency but before the Planning Board meeting (if applicable), the subdivider shall submit the amended application to the Planning Department for review.
  - i. Within 5 working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to subsection (d) below.
  - ii. The 60-working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.
  - iii. If the Planning Department determines the changes are not material, the 60-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
  - iv. If the Planning Department determines the changes are material, the Planning Department shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or proceed with the 60-working day review period upon certification from the Planning Department that the application is sufficient for review.
- b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board meeting (if applicable) but before the County Commission hearing, the subdivider shall submit the amended application or preliminary plat to the Planning Department for review.



- i. Within 5 working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material pursuant to subsection (d) below.
  - ii. The 60-working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.
  - iii. If the Planning Department determines the changes are material, the 60-working day review period resumes when the Planning Department mails notice of the decision to the subdivider.
  - iv. If the Planning Department determines the changes are material, the Planning Department may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii) and (b)(ii).
- d. The following changes, although not an exhaustive list, may be considered material:
  - i. configuration or number of lots;
  - ii. road layout;
  - iii. water and/or septic proposals;
  - iv. configuration of park land or open spaces;
  - v. easement provisions; and designated access.
- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planning Department may appeal the decision to the County Commission by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
  - i. The 60-working day review period is suspended until the County Commission decision on the appeal is made.

- ii. If the County Commission concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the County Commission shall determine whether the subdivision application should be resubmitted.
- iii. If the County Commission concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 60-working day review period resumes as of the date of the decision.
- iv. By appealing the decision of the Planning Department, the subdivider agrees to suspension of the 60-working day review period provided in subsection (i) above.

**L. County Commission Decision and Documentation.**

a. Prerequisites to Approval:

The County Commission may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- i. provides easements for the location and installation of any planned utilities;
- ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section 8 of these Regulations; and
- iv. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights has been considered and will be accomplished before the final plat is submitted.
- v. assures that the requirements of 76-3-504(1)(k), MCA regarding watercourse and irrigation easements has been considered and will be accomplished before the final plat is submitted.
- vi. Provides for the appropriate park dedication or cash-in-lieu.

b. Consideration-Standards:

In approving, conditionally approving, or denying a subdivision preliminary plat, the County Commission shall consider subsection (a) above, and whether the proposed subdivision complies with:

- i. these Regulations, including, but not limited to, submittal requirements of Section 5 and the standards set forth in Sections 6 and 7 of these Regulations;
- ii. applicable zoning regulations;
- iii. other applicable regulations;
- iv. the MSPA, including but not limited to the *Environmental Assessment and Summary of the Probable Impacts Criteria*, Section 9 of these Regulations.

c. Consideration-Evidence:

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the County Commission may consider and weigh the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment; community impact: flood study and/or flood hazard evaluation;
- iii. the summary of probable impacts and mitigation;
- iv. Gallatin County Growth Policy. In accordance with Chapter 5.2, Evaluation of Subdivisions, of the Gallatin County Growth Policy, all proposed subdivisions are evaluated for their effect on agriculture, agricultural water user facilities, local services, natural environment, wildlife and wildlife habitat, and public health and safety, along with all other elements of the Growth Policy.

When a subdivision is proposed in an area subject to the Gallatin County Growth Policy, the Commission shall review the preliminary plat for compliance with the goals and applicable policies (Chapter 3), and the Land Use Diagram (Chapter 10) of the Growth Policy, as described below:

The Commission may not withhold, deny, or impose conditions on a subdivision based solely on compliance with the officially adopted Gallatin County Growth Policy (76-1-605(2)(b), MCA).

- a. Protect Water Quality.
  - Whether the proposed development minimizes adverse impacts on rivers, streams and riparian areas.
  - Whether the proposed development demonstrates compliance with local, State and Federal water quality regulations and standards.
  - Whether the proposed development mitigates adverse impacts to neighboring properties, rivers, streams and riparian areas due to runoff.
- b. Assure Sustained Water Quantity.
  - Whether the proposed development assesses both the immediate and long-term, cumulative impacts on water quantity.
  - Whether the proposed development documents adequate water quantity.
- c. Conserve Important Fish, Wildlife and Plant Habitat.
  - Whether the proposed development conserves important habitat by promoting open space corridors for identified wildlife migration corridors and by buffering important habitat areas.
- d. Protect Air Quality.
  - Whether the proposed development protects air quality and reduces particulate matter by supporting dust control plans for unpaved roads and by minimizing vehicle miles traveled.
- e. Minimize Soil Erosion.
  - Whether the proposed development supports erosion and sediment control measures during road construction.
  - Whether the proposed development complies with re-vegetation and weed control plans as prescribed by the Gallatin County Weed Department through proper weed management plans and memorandums of understanding.
- f. Conserve Open Space.

- Whether the proposed development conserves and preserves open space by complying with plans for parks, recreation, open space and trails, and by supporting the dedication of parks, recreation, open space and trails that are adjacent to or continuations of existing or planned parks, recreation, open space, trails, public lands and riparian areas.
- g. Encourage Residential Development in Areas Planned or Zoned for Residential Use.
- Whether the proposed development documents consistency with the Growth Policy; mitigation of adverse impacts; provision of adequate local services and public facilities; compatibility with existing uses and natural environment; and, compatibility with the logical expansion of local services and public facilities.
  - Whether the proposed development avoids leapfrog development (where new residential land uses are separated from existing urban, compact land use areas).
  - Whether the proposed residential development is located adjacent to existing developed land, and that does not foster sprawl development by: supporting infill development of established neighborhoods, and within Urban and Community designated areas; supporting development within or adjacent to existing developed area; discouraging new development beyond urban and suburban development (leapfrog); and, supporting urban and suburban density land use patterns that are not energy and land consumptive, and do not require a high ratio of road surface to development served.
  - Whether the proposed residential development is clustered and compatible with existing developed land.
- h. Locate Commercial and Light Industrial Development in Areas Planned or Zoned for that Usage.
- Whether the proposed development documents and provides adequate infrastructure (transportation, power, sewer and water facilities, etc.) for new commercial and light industrial development.
  - Whether the proposed development prevents the encroachment of industrial uses into residential areas.
  - Whether the proposed development documents consistency with the Growth Policy and appropriate regulations; suggests mitigation of adverse impacts; and

sets forth: availability of adequate local services and public facilities, compatibility with existing uses and natural environment, and, compatibility with logical expansion of local services and public facilities.

- i. Manage Heavy Industrial Development.
  - Whether the proposed heavy industrial development is located in an area that has minimal adverse impact on other uses.
  - Whether the proposed heavy industrial development documents consistency with the Growth Policy and appropriate regulations; suggests mitigation of adverse impacts, and sets forth: availability of adequate local services and public facilities; compatibility with existing uses and natural environment; and, compatibility with logical expansion of local services and public facilities.
- j. Protect Historic and Pre-Historic Features.
  - Whether the proposed development documents efforts to protect historic features.
- k. Conserve Scenic Resources and Views.
  - Whether the proposed development documents efforts to conserve scenic resources and views by addressing ridge tops and hillsides, signage, off-premise advertising, light pollution, telecommunication towers and landscape buffers.
- l. Provide a Safe and Efficient Transportation System.
  - Whether the proposed development is consistent with the countywide trails plan.
  - Whether the proposed development provides coordinated circulation patterns.
  - Whether the proposed development documents mitigation of dust, noise, and general safety related to speed, intersections, and pedestrian crossings.
- m. Provide for Local Services and Public Facilities.
  - Whether the proposed development provides for fire protection and medical emergency services.
  - Whether the proposed development provides for solid waste disposal.

- Whether the proposed development complies with plans for parks, recreation, open space, and trails.
  - Whether the proposed development addresses adequate law enforcement.
- n. Provide Cost Effective Extension of Public Facilities and Local Services.
- Whether the proposed development addresses a contribution for its appropriate share of the costs of impacts on public facilities and local services.
- o. Protect Human Life and Property From Natural Hazards.
- Whether a proposed development on steep slopes mitigates potential hazards by prohibiting development and road building on slopes greater than 25 percent.
  - Whether the proposed development restricts development in flood hazard areas to protect property and life from flooding.
  - Whether the proposed development is sensitive to those areas prone to wildland fire, and suggests mitigation measures to protect property and life from fires.
  - Whether the proposed development identifies geologically or seismically unstable areas, and suggests mitigation of potential hazards.
- p. Preserve Productive Farm and Ranch Lands.
- Whether the proposed development is consistent with the policies to retain agricultural operations that are adjacent to other agricultural operations or permanent open space by: encouraging development to mitigate the external effects of development on agricultural production; promoting infill and cluster developments in areas away from valuable agricultural lands; and, promoting development adjacent to or within cities, unincorporated communities, and other areas planned for such development where public facilities and infrastructure are available, and away from areas used exclusively for agriculture.
- q. Protect the Right to Farm and Ranch.
- Whether the proposed development protects surface water and groundwater resources critical to agriculture.

- r. Land Use Diagram. The Gallatin County Growth Policy is accompanied by a Land Use Diagram that shows current land uses, with an eye focused on the future. The Diagram is a visual representation of trends to date, how the County has grown and how we might expect it to keep growing. The Diagram includes the following land use categories:
  - Urban. Urban development around existing cities and towns.
  - Unincorporated Communities. Existing unincorporated areas.
  - Rural. Gallatin County's agricultural and forest areas.
  - Zoned. Current Gallatin County zoning districts.
- v. comments, evidence and discussions at the public hearing(s);
- vi. subdivision administrator's staff report and recommendations;
- vii. planning board recommendation; and
- viii. any additional information authorized by law.

Notwithstanding the foregoing, the County Commission may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

- d. Water and Sanitation-Special Rules:
  - i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
  - ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body shall require approval by the MDEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for



a septic system or drain fields will be available when the lots are actually developed.

- iii.* The County Commission shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- iv.* The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the County Commission to the:
  - A. reviewing authority provided in MCA, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and
  - B. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of County Commission Body Decision:

- i.* In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the County Commission shall issue written findings that discuss and weigh the proposed subdivision's compliance with these Regulations and pursuant to 76-3-608(3), MCA) and make it available to the public. The findings shall:
  - A. contain information regarding the appeal process for the denial or imposition of conditions;
  - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
  - C. provide the facts and conclusions that the County Commission relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and

D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

E. set forth the time limit for approval.

**M. Subdivider Preference for Mitigation.** If a Planning Board recommendation was provided, the subdivider may, no later than two working days before the hearing at which the County Commission is to consider the subdivision application and preliminary plat, submit in writing to the Planning Department the subdivider's comments on and responses to the Planning Board's recommendations. At the public hearing, the County Commission will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference. The Commission may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required by these Regulations. The Commission shall issue written findings to justify the reasonable mitigation required by these Regulations.

i. In reviewing a subdivision under this section and when requiring mitigation under this subsection, the Commission may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

**N. Subdivision Application and Preliminary Plat Approval Period.**

i. Upon approval or conditional approval of the preliminary plat, the County Commission shall provide the subdivider with the dated and signed statement of approval as part of the findings. The approval shall be in force for no more than three calendar years.

A. At least 30 days prior to the expiration of the preliminary plat approval, the County Commission, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.

B. The County Commission may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the County Commission and the subdivider.

ii. After the application and preliminary plat are approved, the County Commission may not impose any additional conditions as a prerequisite to

final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.

- iii. The County Commission may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

**O. Restrictive Covenants – Approval, Content and Enforcement by the County Commission.**

- a. The County Commission may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the County Commission, be set forth in a separate heading identifying them as plat approval covenants, and indicating: “These covenant(s) may not be repealed or amended without prior written consent of the Gallatin County Commission.”
- b. The County Commission may require that all restrictive covenants it has required as a condition of plat approval contain the following language: “The Gallatin County Commission is a party to this restrictive covenant and may enforce its terms.”
- c. If common property is to be deeded to a property owners’ association, the covenants and by-laws which govern the association must, at a minimum, provide for the:
  - i. Formation of a property owners’ association concurrently with the filing of the final subdivision plat. Articles of Incorporation shall be filed with the Secretary of State’s office;
  - ii. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
  - iii. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
  - iv. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
  - v. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
  - vi. Adjustment of assessments to meet changing needs;

- vii. Means of enforcing the covenants, and of receiving and processing complaints;
- viii. Transition of control of the association from the Declarant to the homeowners.
- ix. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
- x. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

**P. Amending Approved Preliminary Plats Before Final Plat Approval.**

- a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the Planning Department for review.
  - i. Within 5 working days of receiving the proposed changes, the Planning Department shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.
  - ii. If the Planning Department determines the changes are material, the Planning Department shall require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.
  - iii. If the Planning Department determines the changes are not material, the Planning Department shall accept the changes and notify the subdivider and the County Commission of its decision.
- b. The following changes, although not an exhaustive list, may be considered material:
  - i. configuration or number of lots;
  - ii. road layout;
  - iii. water and/or septic proposals;
  - iv. configuration of park land or open spaces;
  - v. easement provisions;

- vi, designated access; or
- vii. change to conditions of approval.

- c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the Planning Department may appeal the decision to the County Commission by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
- d. If the subdivider and Planning Department determine that a condition of approval appears to be illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, pursuant to Section 13 of these Regulations the condition shall be reviewed by the County Commission at a properly noticed public hearing in order to determine if the condition may be waived or amended.

**Q. Final Plat Required.** After the conditions of preliminary plat approval and the requirements for the installation of improvements have been satisfied, the subdivider shall submit to the Planning Department a final plat. The Planning Department shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The planning department will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee have been received. Final plat applications will not be considered complete by the Planning Department until all conditions of preliminary plat approval have been satisfied. The final plat must be submitted prior to the expiration of the preliminary plat approval period. The requirements for the final plat content and application submittal materials are listed in Section 5 Submittal Requirements, of these Regulations.

**R. Review of Abstract and Covenants.** The certificate of a licensed title abstractor, a copy of the covenants, and evidence that the conditions of preliminary plat approval have been satisfied shall be submitted to the county attorney's office for their review and approval at least 30 working days prior to submitting an application for final plat approval.

**S. Final Plat Review.** The planning department will examine the final plat contents and required final plat application materials and recommend approval only when it conforms to the conditions set forth in the preliminary plat approval, and the terms of the Montana Subdivision and Platting Act and these Regulations.

- 1. Final Plat Submittal: The final plat and all supplementary documents shall be submitted to the planning department at least 30 working days prior to the expiration of preliminary plat approval or any extension thereto, and

no less than 10 working days prior to the date the final plat is presented to the Commission for approval. The submittal shall include: an application for final review, the appropriate fee, approval of county attorney, and all required information, and a written explanation of how each of the conditions of preliminary plat approval has been satisfied.

2. Review by the Planning Department: The planning department shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The planning department will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee have been received. Final plat applications will not be considered complete by the planning department until all conditions of preliminary plat approval have been satisfied, including but not limited to the following:
  - a. Signed final plat certificates.
  - b. Proof of payment of fire impact fees in compliance with the Gallatin County Fire Protection Impact Fee Regulation (Appendix D); or proof of payment of fee as determined by a County approved independent fee calculation study. (*Resolution 2005-168*)
  - c. Proof of payment of road impact fees in compliance with the Gallatin County Road Impact Fee Regulation (Appendix E); or proof of payment of fee as determined by a County approved independent fee calculation study. (*Resolution 2005-168*)
  - d. Fire protection requirements reviewed by the appropriate fire district or fire service area.
  - e. Signed Memorandum of Understanding between Subdivider and Weed Control District.
  - f. County or State encroachment or access permits.
  - g. Documents requiring approval of the County Attorney's Office, including but not limited to the following:
    - i. Articles of Organization or Incorporation for the Property Owners' Association, filed with the Montana Secretary of State.
    - ii. Bylaws controlling the operation of the Property Owners' Association.

- iii. Restrictive and Protective Covenants encumbering the real property contained within the subdivision.
- iv. Restrictive Deed transferring title of all common open space parcels within the subdivision to the Property Owners' Association.
- v. Declaration of Unit Ownership (condominiums).
- vi. Public road easements.
- vii. Improvements agreements.
- viii. Certificate of a licensed Title Abstractor.

**T. Final Plat Approval.**

- a. Approval by the County Commission: The County Commission shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these Regulations, or deny it pursuant to (ii) below:
  - i. If the final plat is approved, the County Commission shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
  - ii. If the final plat is denied, the County Commission shall provide the reason for denial in writing to the subdivider. The County Commission will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.
- b. Incomplete or Inaccurate Information:  
The County Commission may withdraw approval of a final plat if it determines that material information by the subdivider is incomplete or inaccurate pursuant to Section 13.F of these Regulations.

**U. Resubmittal of a Denied Subdivision.** Following denial of a preliminary plat application by the Commission, a new application for the same property may not be submitted unless the following criteria are met:

- 1. The new preliminary plat application must clearly address or mitigate health and safety issues and/or design standards which were the basis of the original preliminary plat denial; and

2. The new preliminary plat application must clearly address the six (6) criteria under 76-3-608(3)(a); and
3. The new preliminary plat application must comply with any adopted zoning regulation or growth policy.

**V. Final Plat Filing.**

After it is approved, the final plat may not be altered in any manner unless amending the final plat. The County Clerk and Recorder may not accept any plat for filing that does not bear the County Commission's approval in proper form or that has been altered. The Clerk and Recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats, contained in Appendix A.

**W. Amending Filed Plats.**

- a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the County Commission.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The County Commission may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.
- c. The County Commission may not approve an amendment that will place a lot in non-conformance with the standards of these Regulations or with local zoning regulations unless the County Commission holds a public hearing on the amendment and issues a written variance from the standards.
- d. The final amended plat submitted for approval must comply with the Final Plats (Appendix A).